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OFFICE OF PETITIONS

In re Application of
Frank Hofmann
Application No. 10/540,988
Filed: June 28, 2005
Attorney Docket No. HOFMANN-5

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 24, 2008, to revive the above-identified application. This is also a decision on the Request for Refund pursuant to 37 CFR 1.26 filed on December 8, 2008

The petition is **GRANTED**.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Final Office Action of May 14, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A three month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is November 15, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

Petitioner requests a refund of \$1,110 for a three month extension of time submitted on November 12, 2008. However, the three month extension of time fee was required in order to make the amendment submitted on November 12, 2008 timely filed within the six month statutory period. Petitioner should note that pursuant to 37 CFR 1.26(a), “[t]he Director may refund any fee paid by mistake or in excess of that required.” A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was

paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee". Therefore, the \$1,110 fee submitted on November 12, 2008 will not be refunded.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 3672 for appropriate action by the Examiner in the normal course of business on the reply received.



Andrea Smith
Petitions Examiner
Office of Petitions